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Child Welfare: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)

October 9, 2008

Congressional Research Service
https://crsreports.congress.gov
RL34704

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893) is an omnibus child welfare bill designed to ensure greater permanence and improve the well-being of children served by public child welfare agencies. The legislation received strong support in Congress and, beyond revising and extending the Adoption Incentives program, responds to a range of issues and concerns that have been raised (some for more than a decade) by public child welfare administrators; youth, adoption, tribal, and child welfare advocates; and by children and youth who have been (or still are) in foster care. The bill passed the House of Representatives, by voice vote (under suspension of the rules), on September 17, 2008, and the Senate, by unanimous consent, on September 22, 2008. It was signed into law by the President on October 7, 2008 (P.L. 110-351).

The final bill represented a compromise between earlier bills acted on in the House (H.R. 6307) and in the Senate Finance Committee (S. 3038). As enacted, it revises the Adoption Incentives program and extends its funding authorization for five years (FY2009-FY2013). It makes significant changes to federal funding for child welfare programs, which include authorizing new federal support for states that provide kinship guardianship assistance to eligible children leaving foster care; expanding eligibility for federal adoption assistance (by phasing out, over FY2010-FY2018, income and other eligibility criteria that are based on dated cash welfare program rules); extending, as of FY2011, eligibility for federal foster care assistance to youth who remain in care beyond their 18th birthday, up to age 21; and phasing in additional support to states for child welfare related training. Additionally, the bill authorizes tribal child welfare agencies, as of FY2010, to directly access federal funds for foster care, adoption, and guardianship assistance under the Title IV-E program, provided the tribes meet substantially the same requirements made of states. The bill also appropriates $15 million in annual funding, for five years, for a new competitive grant program, Family Connection Grants.

Apart from these financing changes, P.L. 110-351 establishes new requirements for receipt of federal child welfare funding by public child welfare agencies. These include several that focus exclusively on the health and education status of children in foster care and others intended to ensure, or enable, sibling and other kinship connections for children in, or entering, foster care, and those leaving to adoption or guardianship. The bill also requires states to make new efforts related to planning for the transition of older children leaving foster care for independent living and requires states to inform prospective adoptive parents of foster children of their potential eligibility for the adoption tax credit (under the federal tax code).

Many of the changes included in the new law are projected by the Congressional Budget Office (CBO) to increase federal spending for child welfare. However, the increases are projected to be fully offset (over the next five and ten years) by savings or increased revenues to the federal treasury that CBO expects to be produced by other changes in the bill (both related and unrelated to child welfare policy). This report may be updated if warranted by issues related to implementing the new law.

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The Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893) is an omnibus child welfare bill designed to ensure greater permanence and improve the well-being of children served by public child welfare agencies—especially children in foster care, those who leave foster care in their later teens, and those who are Indian children. The legislation received strong support in Congress, and beyond revising and extending the Adoption Incentives program, it responds to a range of issues and concerns that have been variously raised (some for more than a decade) by public child welfare administrators; youth, adoption, tribal, and child welfare advocates; and by children and youth who have been (or still are) in foster care. The bill passed the House of Representatives, by voice vote (under suspension of the rules), on September 17, 2008, and the Senate, by unanimous consent, on September 22, 2008. It was signed into law by President George W. Bush on October 7, 2008. As enacted, P.L. 110-351 represents a compromise between provisions that were included in the Improved Adoption Incentives and Relative Guardianship Support Act of 2008 (S. 3038, introduced by Senator Charles Grassley), as approved by the Senate Finance Committee on September 10, 2008 (S.Rept. 110-467), and the Fostering Connections to Success Act (H.R. 6307, introduced by Representative Jim McDermott with Representative Jerry Weller), as passed by the House on June 24, 2008.[1]

Overview of the Bill

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) revises and extends the Adoption Incentives program (under Section 473A of the Social Security Act) for five years, authorizes states to claim additional federal funds for certain child welfare purposes and adds new requirements for receipt of federal child welfare dollars. These changes are primarily designed to better ensure the well-being of children in foster care, to increase support for permanent living arrangements outside of foster care, to better support the transition of older foster youth to independent living, and to enable tribes to directly access federal support for foster care, kinship care, and adoption assistance provided to Indian children under their authority.

Financing Changes

P.L. 110-351 enacts the broadest changes to federal financial support for child welfare programs under Title IV-E of the Social Security Act, since that part of the law was created by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). Among those changes, the bill

- permits states to claim open-ended federal reimbursement for a part of all eligible state costs related to providing kinship guardianship assistance;
- permits states to claim open-ended federal reimbursement for a part of the cost of making maintenance payments on behalf of eligible children who are in foster care beyond their 18th birthday (until their 21st birthday), provided those youths are in school, working, or engaged in a related activity (effective with FY2011);
- authorizes direct access for tribes to open-ended federal reimbursement for the costs of operating a foster care, adoption assistance, and kinship guardianship assistance program on behalf of children under tribal authority, provided those tribes meet substantially the same requirements made of states receiving these funds (effective with FY2010);

[1] For more information on these earlier bills, see the subsection, "Origins of the Enacted Bill and Views" later in this report.

- expands federal support for adoption assistance by de-linking, over time (FY2010-FY2018), eligibility for that program from income and other criteria that were a part of the prior law cash welfare program, Aid to Families with Dependent Children (AFDC); and
- phases-in (FY2009-FY2013) authorization for states to claim open-ended federal reimbursement for a larger share of their short-term training costs for staff of state licensed or approved (private) child welfare agencies and to receive reimbursement, at this same increased rate, for eligible short-term training costs of current or prospective relative guardians and certain court or court-related personnel who handle child abuse and neglect cases.

In addition, P.L. 110-351 provides $15 million annually (FY2009-FY2013) for Family Connection Grants to support kinship navigator programs, family group decision making meetings, intensive family-finding efforts, and residential treatment centers for families (under Title IV-B of the Social Security Act). And it appropriates $3 million annually (FY2009 and every succeeding fiscal year) for technical assistance and implementation grants related to improving outcomes for Indian children (under Title IV-E).

New Requirements

Apart from expanding child welfare funding options for states, P.L. 110-351 establishes new requirements for receipt of federal child welfare funding by public child welfare agencies. The bill requires these agencies (under Title IV-E or Title IV-B) to

- provide assurance that each school-age child receiving federal foster care, adoption, or guardianship assistance is enrolled in school;
- work with other appropriate public agencies to reduce unnecessary school moves for all children in foster care and, separately, to coordinate and ensure access to health care for them, including mental health services and dental care;
- make “reasonable efforts” to place siblings together, whether in foster care, adoption, or guardianship;
- notify the adult relatives of children entering foster care of their options to participate in the care and placement of the child;
- no more than 90 days before a youth’s exit from the foster care system (due to age rather than placement with a permanent family) develop with the youth a specific plan for his or her transition to independent living;
- negotiate “in good faith” with a tribe in the state that requests an agreement with the state to receive federal (Title IV-E) funds in return for that tribe’s administration of some or all of the Title IV-E foster care, adoption assistance, and kinship guardianship assistance program for Indian children under its authority; and
- inform prospective adoptive parents of foster children of their potential eligibility for the federal adoption tax credit.

P.L. 110-351 makes additional child welfare financing, policy, or related program changes, which are detailed below. Finally, and unrelated to child welfare policy, it amends the federal tax code’s uniform definition of child (for purposes of claiming a variety of credits or deductions) and it makes changes to certain investment rules for the Treasury Department. Those specific policy changes, together with savings projected from the implementation of guardianship assistance and the school enrollment requirement, are estimated by the Congressional Budget Office (CBO) to

fully offset the federal cost of the increased spending authorized by the bill over the next 5 and 10 years. All of the child welfare policy changes in P.L. 110-351 are made to programs or parts of the law that are administered by the Administration for Children and Families (ACF), within the U.S. Department of Health and Human Services (HHS), and are expected to be implemented by ACF.[2]

This report begins with a more detailed and topical summary of the provisions of H.R. 6893, as enacted, including some legislative background and context. It continues by reviewing the cost estimates for the provisions, as projected by CBO, and then discusses the legislative origins of the enacted bill and Administration views of provisions included in related predecessor bills (H.R. 6307 and S. 3038). It closes with a section-by-section description of the bill's provisions.

New and Expanded Assistance or Activities Related to Permanence

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) makes a number of financing and policy changes that are designed to encourage and support children's placement in a permanent family—whether through strengthened or re-established connections with biological kin or through federal support and incentives to support children's adoption out of foster care.

Permanence via Family Connections

The enacted bill permits states to claim federal support for kinship guardianship assistance (under Title IV-E of the Social Security Act), makes other policy changes expected to promote or facilitate relative placement, authorizes and provides funding for Family Connection Grants, and requires states to make reasonable efforts to place siblings together.

Kinship Guardianship Assistance

The enacted bill permits states to claim open-ended reimbursement under Title IV-E for kinship guardianship assistance provided on behalf of eligible children who leave foster care for placement in a legal guardianship with a relative. As amended by the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89), federal statute defines "legal guardianship" (for purposes of Title IV-E and Title IV-B of the Social Security Act) as "a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking."[3] States are entitled to claim federal reimbursement for the cost of providing kinship guardianship assistance payments on behalf of eligible children at their Federal Medical Assistance Percentage (FMAP), which may range from a low of 50%, in states with higher per capita income, to 83%, in those with lower per capita income. States opting to provide such payments may also claim reimbursement of eligible general administrative costs at a 50% federal reimbursement rate, and for program-related training costs at 75% federal reimbursement, (although some of these eligible training costs will initially be reimbursed at a lower rate; see "Federal Support for Training and Other Changes" below).

[2] This report seeks to provide a "plain" language discussion of the bill. However, certain child welfare provisions may be subject to different interpretations. HHS has the authority to implement these provisions and, in doing this, will interpret their meaning.

[3] Section 475(7) of the Social Security Act.

Since the middle 1990s, close to 40 states have implemented some kind of subsidized guardianship program for children leaving foster care. However, many of those programs were not statewide and not all have been maintained.[4] Under child welfare "waivers," as many as 11 of those states have experimented with subsidized guardianship programs using federal Title IV-E funds.[5] Some of those earliest experiments found that providing guardianship subsidies increased exits to permanence for children in foster care and that on a range of safety and well-being measures, children placed in subsidized guardianship settings fared at least as well as did children placed in other permanent settings.[6]

In May 2004, the Pew Commission on Children in Foster Care recommended federal support of subsidized guardianship (under Title IV-E of the Social Security Act) as part of a broader package of child welfare financing reform measures. In July 2007, citing evidence that the subsidies "could help states increase the number of permanent homes available to African American and other children in foster care," the Government Accountability Office (GAO) recommended that Congress consider authorizing federal subsidies for legal guardianship.[7] In its report approving guardianship assistance provisions similar to those that became a part of the final legislation, the Senate Finance Committee cited both the child welfare waivers and academic research to assert that children in kinship placements, including relative guardianships, have improved well-being; that guardianship is a good permanency option for children in foster care; and that provision of a state option to receive federal support for guardianship assistance under Title IV-E is expected to reduce federal costs under Title IV-E (by reducing the need for federal reimbursement of case planning and case review activities on behalf of children moved permanently from foster care to guardianship).[8]

Changes to Promote or Facilitate Relative Placement

The option to use federal Title IV-E funds to support children in kinship guardianship is only one of a number of changes included in P.L. 110-351 that seek to strengthen children's connections to their families and to create more opportunity for kinship placements (whether guardianship or otherwise).[9] These include

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[4] For programs implemented in place as of 2004, see Children's Defense Fund, *State's Subsidized Guardianship Laws at a Glance,* (October 2004).

[5] Congress initially granted child welfare "waiver" authority to HHS (P.L. 103-432, 1994) That authority is currently expired, although some states continued to operate assisted guardianship programs with Title IV-E dollars under previously approved waivers. As of September 30, 2008, the seven state believed to have ongoing demonstration projects (waivers) specifically addressing guardianship were IL, IA, MN, MT, OR, TN, and WI. See James Bell Associates, "Summary of the Title IV-E Child Welfare Waiver Demonstrations," June 2008.

[6] U.S. Department of Health and Human Services, *Synthesis of Findings, Assisted Guardianship: Child Welfare Waiver Demonstrations*, September 2005.

[7] Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care,* May 2004, p. 16; U.S. Government Accountability Office (GAO), *African American Children in Foster Care: Additional HHS Assistance Needed to Hel States Reduce the Proportion in Care,* July 2007, p. 6.

[8] See S.Rept. 110-467 to accompany S. 3038, p. 5. These reasons are similar to those given for the creation of the adoption assistance program in 1980 (P.L. 96-272). See U.S. Congress, Senate, 96th Congress, 1st session, *Adoption Assistance and Child Welfare Amendments of 1979*, S.Rept. 96-336, p. 13 and U.S. Congress, House of Representatives, 96th Congress, 1st session, *Social Services and Child Welfare Amendments of 1979*, H.Rept. 96-136, p. 55-56.

[9] Regarding past legislative actions related to both kinship placement and guardianship under Title IV-E of the Social Security Act, see "Placement with Relatives and Guardianship," in U.S. Congress, Senate, 110th Congress, 2nd session, *Improved Adoption Incentives and Relative Guardianship Support Act of 2008,* S.Rept. 110-467, p. 2-3 http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:sr467.110.pdf.

- a new plan requirement (under Title IV-E) that states "exercise due diligence" to identify grandparents and other adult relatives of a child, within 30 days of removing the child from the custody of his/her parents, and to notify those relatives of the child's removal and the relatives' options for participating in the care and placement of the child, including information about foster family home licensing and, as applicable, guardianship assistance;[10]
- codification of existing guidance (regarding a Title IV-E state plan requirement) that provides that when applying the state's foster family home licensing standards to the home of a relative caregiver, the state may—on a case-by-case basis and for a specific child only—waive any "non-safety" licensing requirement;
- a mandated study and report (by HHS) on the use of licensed and unlicensed relative foster family homes, including information on the frequency and kind of non-safety standards waived by states and recommendations for actions that might increase the number of children in foster care who are safely placed in licensed relative foster family homes; and
- authorization for HHS to make comparisons of names submitted by child welfare agencies to information in the Federal Parent Locator System (FPLS), which may aid in identifying or locating relatives.[11]

Family Connection Grants

Further, the bill establishes a new competitive grant program, under Title IV-B, Subpart 1 of the Social Security Act named Family Connection Grants. Under this program, public child welfare agencies (state, local or tribal), and non-profit private organizations may seek federal funding to help children—whether they are in foster care or at-risk of entering foster care—connect (or reconnect) with birth parents or other extended kin. Specifically, the funds must be used to establish or support one or more of the following:

- **kinship navigator programs**, which through information referral systems and other means, assist kinship caregivers in learning about, finding, and using programs and services to meet their own needs and those of the children they are raising;
- **intensive family-finding efforts** that use search technology to locate biological kin of children and then work to reestablish relationships and to explore permanent family placements for these children;
- **family group decision-making meetings** that enable families to develop plans that nurture children and protect them from abuse and neglect, and, when appropriate, must safely facilitate connecting children exposed to domestic violence to relevant services and reconnecting them with the abused parent; and

[10] The enacted bill stipulates that this requirement is subject to exceptions due to family or domestic violence.

[11] The FPLS was created initially for child support enforcement purposes and only non-custodial parents of the child may be identified by name match. However, this information may also help to locate additional relatives. Under prior law states could seek information from the FPLS indirectly (through the state child support agency) rather than directly from HHS. For more information, see U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) Information Memorandum, "Appropriate Referrals, Requests for Location Services, Child Support Applications, and Electronic Interface between Child Welfare and Child Support Enforcement Agencies," ACYF-CB-IM-07-06 (issued jointly with the Office of Child Support Enforcement), September 7, 2007 http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2007/im0706.htm.

- **residential family treatment centers** that enable parents and children to live together in a safe environment for not less than six months and that provide, onsite or by referral, a full range of services to meet the needs of the family, including substance abuse treatment, early childhood intervention, family counseling, mental health services, medical care, and other services.

HHS is permitted to award up to 30 new Family Connection Grants each year and may not award a grant for a period of less than one year nor more than three years. Grantees are required to provide matching funds equal to no less than 25% of the total approved grant program costs in years one and two of a grant and no less than 50% in year three. The enacted bill appropriates $15 million for the Family Connection Grants in each of FY2009-FY2013, of which $5 million must be used annually to support kinship navigator programs.

Reasonable Efforts to Place Siblings Together

Finally, unless the state documents that doing so would be contrary to the safety or welfare of a sibling, the bill requires states (under the Title IV-E state plan) to make "reasonable efforts" to place siblings together, whether in foster care, kinship guardianship assistance, or adoption. It further stipulates that, whenever a joint placement is not made, the state must make "reasonable efforts" to provide for "frequent visitation or other ongoing interaction" between the siblings, unless the state documents that the facilitated contact is contrary to the safety or well-being of any one of the siblings.

Permanence via Adoption

P.L. 110-351 also expands eligibility for federal adoption assistance to children with special needs, revises and extends the Adoption Incentives program, and requires states to provide information to prospective adoptive parents concerning the adoption tax credit.

Phasing Out Income Eligibility and Related Rules for Adoption Assistance

The enacted bill phases out (FY2010-FY2018) the use of income tests as part of determining eligibility for federal adoption assistance. This change will provide more *federal* support to special needs children who leave foster care for adoption. States must continue to pay a part of the cost of providing this support but are required to use any state funds that would be saved because of this expanded federal eligibility for adoption assistance on child welfare purposes.[12]

Federal adoption assistance was established in 1980 (P.L. 96-272) for children determined by their state to have "special needs."[13] The vast majority of these children, then and now, are children adopted out of foster care. The 1980 law also stipulated that to be eligible for federal adoption assistance a child must either be eligible for Supplemental Security Income (SSI) or have been removed from the home of birth parents in which he or she met the income and other

[12] P.L. 110-351 does not specify how the state's "savings" are to be determined and it is not exactly clear how this requirement will be implemented.

[13] For purposes of the Title IV-E adoption assistance program, to qualify as a child with "special needs," the state must have determined that (1) the child cannot or should not be returned to the home of his/her parents; (2) that there is a factor or condition specific to the child (such as the child's age, membership in sibling group, race/ethnicity, medical condition, or a physical, emotional or mental disability) that makes it "reasonable to conclude" that the child will not be adopted without adoption assistance or Medicaid. Further, unless this is not in the child's best interest (e.g. because of significant bonding with foster parents), the state must determine that reasonable, but unsuccessful, efforts to place the child without such assistance have been made. See Section 473(c) of the Social Security Act.

eligibility criteria of the federal cash welfare program (Aid to Families with Dependent Children, AFDC).[14] AFDC was repealed in 1996 by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, P.L. 104-193). However, federal eligibility for Title IV-E assistance continues to be linked to AFDC eligibility rules as those rules existed (on July 16, 1996) prior to the program's repeal. Beginning in FY2010 (and continuing through FY2018), P.L. 110-351 will phase out this link for adoption assistance, which the Senate Finance Committee describes as "an inappropriate eligibility factor for Federal Adoption Assistance."[15] (As included in the enacted bill, the revised eligibility rules for federal adoption assistance also eliminate any income- or resource-related eligibility requirements that apply to special needs children who have physical or medical disabilities that qualify them for Supplemental Security Income, SSI.)

The revised eligibility rules will become effective in FY2010, but only for children who are age 16 or older when their adoption assistance agreement is finalized. With each new fiscal year, this age will be lowered (by two years) so that by FY2018 any child with special needs may qualify for federal adoption assistance under the revised rules. In addition, beginning in FY2010, any child who has been in foster care for 60 continuous months may qualify for federal adoption assistance under the revised eligibility rules (regardless of age) and any sibling of a child who is eligible under the revised rules (whether due to age or length of stay in care) may also qualify under those criteria. Throughout this eight-year phase-in period, the eligibility criteria that applied prior to the passage of H.R. 6893, including the link to AFDC eligibility, will continue to apply to any child who does not qualify for eligibility determination under the revised rules (at the time his or her adoption assistance agreement is finalized).

Reauthorization of the Adoption Incentives Program

Apart from the expanded support for federal adoption assistance, the Fostering Connections to Success and Increasing Adoptions Act of 2008 continues incentives to states for increased adoptions from foster care by revising and extending the Adoption Incentives program. This program was created by ASFA (P.L. 105-89) and was initially extended in 2003 by P.L. 108-145. A state earns a bonus for each eligible adoption out of foster care that is above its baseline number of adoptions. States earn an award for increases in total adoptions, increases in adoption of older children (age 9 and above) and, they may also receive an award for increases in the number of adoptions of children with special needs who are under the age of 9. For adoptions finalized in FY2007 (most recent year for which awards were made), 21states earned a total of $11.1 million in bonus funds.[16] States are permitted to spend this award money to provide any

[14] In certain instances, the home from which the child is removed might also be the home of another relative caretaker. Regarding the creation and evolution of the link between eligibility for federal cash welfare assistance, see "Title IV-E Foster Care and Adoption Assistance," in S.Rept. 110-467, p. 2, accompanying S. 3038.

[15] Many observers and stakeholders also believe this link is inappropriate for determining eligibility for federal foster care maintenance payments under Title IV-E. However, consensus on how to change this policy has not been reached. P.L. 110-351 leaves the link between federal foster care eligibility and the rules of the now repealed AFDC program in place, and, by making eligibility for federal foster care maintenance payments a pre-condition of eligibility for federal kinship guardianship assistance, it indirectly establishes this link with regard to the new kinship guardianship assistance program. For more information on the link, see CRS Report RL34388, *Child Welfare Issues in the 110th Congress*, by Emilie Stoltzfus, especially the section "Delink Foster Care and Adoption Assistance from AFDC Rules" and Appendix A.

[16] These FY2007 award amounts were determined in the last quarter of FY2008. However, available appropriated funds for Adoption Incentives (just over $9 million) were not sufficient to provide the full FY2007 award amounts at that time. HHS indicated its intent to pay a part of the FY2007 awards (roughly 84%) at the end of FY2008 and the remainder (roughly 16%) at the beginning of FY2009. See Adoption Incentive award history table at http://www.acf.hhs.gov/programs/cb/programs_fund/adopt_incentive_history.htm.

service to children or families, including post-adoption services, that is authorized by the major federal child welfare programs (under Title IV-B or Title IV-E of the Social Security Act).

P.L. 110-351 continues, through FY2013, the current annual funding authorization of $43 million for the Adoption Incentive program. It doubles the incentive amounts states may earn for each increase in the number of older children adopted from foster care (from $4,000 to $8,000) and for children with special needs, under age 9, who are adopted from foster care (from $2,000 to $4,000). The incentive award for any increase in the total number of children adopted from foster care was not changed and remains at $4,000. The enacted bill also makes other changes to the incentive structure of the program, which are intended to ensure that states (even those with declining overall foster care caseloads) continue to have a fiscal incentive to increase adoptions. These changes include fixing each state's baseline adoption numbers at the numbers achieved in FY2007 and allowing (provided sufficient appropriations) a new incentive payment for states that increase the *rate* of children adopted from foster care.[17] To earn an award for an increased rate of adoptions, the state must increase the share of children adopted out of its foster care caseload (that is its foster child adoption rate) above the highest such rate it previously achieved, in any year, beginning with FY2002 and ending with the year just prior to the award year. The amount of the award is $1,000 times the increased number of adoptions achieved by the state that are attributed to the increased adoption rate.[18] The increased incentive payment amounts and the incentives for states increasing the rate at which children are adopted out of their foster care caseload, will be used to calculate awards earned by states for adoptions finalized in FY2008. Those awards are expected to be announced in September 2009. Finally, P.L. 110-351 also ensures that states have a full 24 months to spend any adoption incentive funding awarded.

Information on Adoption Tax Credit

As part of supporting the goal of increasing permanence for foster children through adoption, P.L. 110-351 requires states (under Title IV-E), to provide notice to any individual who is adopting a child out of foster care (or who the state learns is considering such an adoption) of the individual's potential eligibility for the federal adoption tax credit. The credit is adjusted annually for inflation and for tax year 2008 equals $11,650 for individuals who adopt children with "special needs."[19]

Support for Older Foster Youth and Transition to Independent Living

The Fostering Connections to Success and Improving Adoptions Act of 2008 (P.L. 110-351) also seeks to strengthen support for children whose permanency outcome is "independent living." These are youth who "emancipate" from foster care; that is, they are released from state foster

[17] In its FY2009 Budget, the Bush Administration proposed fixing the Adoption Incentive baseline year as FY2007 and increasing award amounts for older and special needs adoptions. The enacted bill (H.R. 6893) adopted these proposals (although it increased the award amounts differently), added others (e.g., incentive for increase in rate) but did not adopt another Administration proposal to limit state use of any earned incentive award funds for finalizing adoption or other permanency options. For more information see "Adoption Incentives" in CRS Report RL34388, *Child Welfare Issues in the 110th Congress*, by Emilie Stoltzfus.

[18] For a description of how to calculate this award see the footnote on this question that is included under "Section: 401: Adoption Incentives Program," near the end of the report.

[19] For more information on the adoption tax credit, see CRS Report RL33633, *Tax Benefits for Families: Adoption*, by Christine Scott.

care custody because they have reached the state age of majority (typically age 18) rather than because they have been placed with a permanent family. At least since the middle 1980s (P.L. 99-272), Congress has sought to better aid the transition of these youth from foster care to independent living. With the Chafee Foster Care Independence Act of 1999 (P.L. 106-169), Congress significantly expanded support for services to youth both before and after they "age-out" and in 2001 (P.L. 107-133), it authorized funds for Education and Training Vouchers for these youth. Even so the number of children leaving foster care via emancipation continues to grow—reaching close to 27,000 youth in FY2006—and, in general, their school, work, and other important life outcomes continue to be poor.[20]

Option to Extend Support for Youth Remaining in Care to Age 21

P.L. 110-351 takes a new tack in responding to this longstanding concern by permitting states, as of FY2011, to provide continued federal foster care maintenance payments on behalf of eligible children even after they have reached their 18th birthday. Under current law, federal Title IV-E assistance ends with a child's 18th birthday, (or, possibly, the 19th if the child is still completing high school). Specifically, the enacted bill permits states to continue to seek open-ended federal reimbursement for a part of the cost of providing maintenance payments to eligible children who remain in foster care after their 18th birthday, provided those children have not yet reached their 21st birthday and are either enrolled in school, employed at least 80 hours a month, or participating in an activity designed to promote or remove barriers to employment. States may exempt a youth from these requirements so long as the youth has a medical condition making him or her incapable of participating in the activity, and this incapacity is supported by regularly updated information in his or her case plan. P.L. 110-351 also permits continued support to youth in foster care (age 18 or older) who are living independently in a supervised setting and it stipulates that HHS must define, in regulation, what qualifies as such a setting.[21]

New Transition Planning Requirement

Separately, the bill requires each state (as part of its mandatory case review system) to have a procedure that ensures every child leaving foster care has a transition plan created on his or her behalf. The transition plan must be created with the youth by a caseworker and, as appropriate, other representative(s) of the child—no earlier than 90 days before the child's 18th birthday (or at whatever later age chosen by the state to end foster care assistance). It must address specific options for the youth with regard to housing, health insurance, education, local opportunities for mentors and continuing support services, as well as workforce supports and employment services.

Option to Extend Support for Youth Leaving Care for Permanent Home After Reaching Age 16

With limited exceptions, monthly federal (Title IV-E) assistance has not generally been available for a child who has reached his or her 18th birthday and who left foster care for a permanent family via adoption or kinship guardianship. However, P.L. 110-351 permits states, as of FY2011, to choose to continue federally supported subsidies on behalf of eligible children who leave foster care *after* their 16th birthday for adoption or kinship guardianship so long as those youth have not

[20] For more legislative history on this issue see S.Rept. 110-467, p. 4, accompanying S. 3038 and for a comprehensive look at the issue of youth aging out of foster care see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs* , by Adrienne L. Fernandes.

[21] For additional information regarding living arrangements for older youth, see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs* , by Adrienne L. Fernandes.

yet reached their *21st birthday*, and are enrolled in school, employed at least 80 hours a month, or participating in an activity designed to promote or remove barriers to employment. (States may exempt a child from these school, work or other engagement requirements if the child has a medical condition that makes him or her incapable of participating in the activity, and this incapacity is supported by regularly updated information in the child's case plan.) In addition, a state is allowed to continue federal adoption assistance *or kinship guardianship assistance* up to the 21st birthday on behalf of any child, regardless of the age at which the child left foster care, if the state determines that "the child has a mental or physical handicap that warrants the continuation of assistance." (This was and remains true with regard to adoption assistance; P.L. 110-351 will also extend it, as of FY2011, to kinship guardianship assistance.)

Services For Youth Leaving Foster Care After Reaching Age 16

Finally, the enacted bill expands the purposes of the Chafee Foster Care Independence Program to provide that any of the activities or services provided in support of independent living for youth who are expected to age out of foster care without a permanent family, may also be provided to youth who leave foster care at age 16 or older, to either adoption or guardianship. The bill also extends eligibility for Education and Training Vouchers (which are valued at $5,000 annually and may be used for the cost of attending college or an equivalent training program) to youth who leave foster care for guardianship after their 16th birthday. (Children who leave foster care for adoption after their 16th birthday continue to be eligible for these vouchers as was true under prior law.)

Well-Being of Children in Foster Care

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) makes new requirements of states that focus on ensuring and enabling stable enrollment in school for children in foster care and on their access to needed and appropriate health care, including mental health services and dental care. For more then a decade, the primary goals of federal child welfare policy have commonly been expressed as achieving safety, permanency, and well-being for children. However, the health- and education-related requirements included in P.L. 110-351 are among the first federal *statutory* requirements of child welfare agencies that focus specifically on the well-being of children in foster care—as distinct from their need for safety and permanence.[22]

[22] The assertion of safety, permanency, and well-being as primary federal child welfare policy goals was first introduced by the Clinton Administration as part of implementing new funding for family preservation and family support services (authorized in 1993 by P.L. 103-66). Before 2006 then, the sole *statutory* use of the term "well-being" in Title IV-B and Title IV-E—and as distinct from safety, permanence or child "welfare"—was a reference added by that 1993 law as part of the definition of "family support." (Although it is commonly cited as establishing safety, permanency, and *well-being,* as the primary federal child welfare goals, the Adoption and Safe Families Act (P.L. 105-89, 1997) focused on safety and permanence and did not add the term "well-being" to the statute.) The 109th Congress, however, added "well-being" to Title IV-B and Title IV-E in several places. Notably, P.L. 109-288 (2006) restated the purposes of Title IV-B, subpart 1 to include "promoting the safety, permanence, and well-being of children in foster care and adoptive families." (For early discussion of "well-being" of children and families as a primary federal child welfare policy goal see U.S. Department of Health and Human Services, Administration for Children and Families, ACYF-PI-94-01, January 18, 1994; *Federal Register*, October 4, 1994, p. 50646-50673 and *Federal Register,* November 18, 1996, p. 58657.)

Education Stability and Enrollment

Specifically, P.L. 110-351 requires state child welfare agencies—as part of the Title IV-E case plan requirements that apply to each child in foster care—to work with relevant state and local education authorities to ensure that a child remains in the same school in which he or she is enrolled at the time of foster care placement, or, if this is not in the best interests of the child, to ensure immediate and appropriate enrollment for the child in a new school. To help support this requirement, the enacted bill permits states to claim federal funding for the cost of transporting children to their "school of origin" at the same reimbursement rate that is provided for foster care maintenance payments. (That rate ranges from 50%-83%, with states with higher per capita incomes receiving a lower federal reimbursement rate and vice versa.[23]) Separately (under the Title IV-E plan), P.L. 110-351 requires states to assure that children who have reached the minimum age for mandatory school attendance in their state, and who are receiving federal foster care maintenance payments, adoption assistance, or kinship guardianship assistance, are enrolled in school or have completed high school.

Health Care Oversight

Further (under Title IV-B, Subpart 1), the new law requires each state to develop a coordinated strategy and oversight plan to ensure access to health care, including mental health services and dental care, for all children in foster care. This coordinated strategy and oversight plan must be a collaborative effort between the state child welfare agency and the state agency that administers Medicaid (in consultation with pediatric and other health care experts, as well as experts in, or recipients of, child welfare services). Among other things, the strategy and plan must outline: a schedule for initial and follow-up health screens; how the health needs identified by those screens will be monitored and treated; how medical information for children in care will be updated and appropriately shared; steps to ensure continuity of health care services; and oversight of prescription medicines.

These new health- and education-related requirements are unique in federal child welfare policy because they look beyond the safety and permanence needs of children in foster care and focus instead on measures of well-being that are considered relevant to *any* child in the nation.[24] Safety and permanence are also critical to the well-being of all children. However, by definition, they are issues of immediate and special concern for children in foster care. Accordingly, federal child welfare policy has long focused on ways to better achieve and ensure them. Notably, the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) recognized the critical need for permanence by providing new incentives for case planning for each child in foster care and by authorizing federal support for adoption assistance to children leaving foster care. Further, more than a decade ago, ASFA (P.L. 105-89) asserted the primacy of safety in all child welfare decisions and reinvigorated attention to permanence for children in foster care by establishing

[23] This means states are now *statutorily* entitled to, in most cases, a higher federal reimbursement rate for these transportation costs than was permitted by federal guidance issued on this topic in December 2007. That *guidance* clarified that states could claim reimbursement of 50% for these transportation costs. (See U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Welfare Policy Manual*, Section 8.1B, Question 27.)

[24] For many years states have been required to collect "to the extent available and accessible" the health and education record of each child in foster care (as part of each child's case plan) and to take into account the proximity of the school in which a child was enrolled when placing a child in foster care. The 109th Congress enacted two changes that moved Congress in the direction of the 2008 requirements: (1) it removed the modifying phrase "to the extent available and accessible," leaving simply the requirement that states collect the health and education records of children in foster care (P.L. 109-239), and (2) it added a new requirement that states must consult with physicians on appropriate care for children in foster care (P.L. 109-288).

new case planning and case review timetables and requirements, and by establishing the Adoption Incentives program.

Direct Federal Support to Tribal Programs

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) seeks to improve the child welfare services and supports available to Indian children by granting tribes (as of FY2010) the same authority that states have to seek federal reimbursement of a part of all their eligible foster care, adoption, and kinship guardianship assistance costs. Indian children may currently be eligible for Title IV-E assistance if they are in the care and placement responsibility of a state. However, children under the care and placement responsibility of a tribe may not receive this assistance *unless* the tribe's responsibility of the child is "supervised" by the state via a state-tribal cooperative agreement. Explaining their approval of direct tribal access to federal Title IV-E support—which has been a goal of tribal child welfare advocates for many years and has been proposed in every Congress since at least the 105th (1997)—the Senate Finance Committee stated that "tribes, tribal consortia, and tribal organizations may provide higher quality and more culturally appropriate care for Indian children."[25]

To receive Title IV-E funds, a tribe, tribal organization, or tribal consortium[26] must submit a plan for approval to HHS and, with specific and limited exceptions, must meet all the requirements for receipt of this funding "in the same manner" as they are required of states. The bill also permits tribes (as of FY2010) to apply to HHS and receive a direct federal allotment of Chafee Foster Care Independence and/or Education and Training Voucher funds. In addition, it stipulates that current "cooperative agreements"—agreements between a tribe and state, which permit a tribe to receive federal Title IV-E funds via the state—must continue unchanged, unless either party with the right to revoke or change the agreement elects to do so.

P.L. 110-351 provides for calculation of a tribe-specific federal matching rate for foster care maintenance payments, adoption assistance payments, and kinship guardianship assistance payments (a "tribal FMAP"). Tribes with an approved Title IV-E plan are to receive this reimbursement rate directly from the federal government. If a tribe has a cooperative agreement or contract with a state to administer Title IV-E payments, that state is to receive reimbursement at the tribal FMAP for the portion of its Title IV-E foster care maintenance, adoption assistance or kinship guardianship assistance payments that are made under the state-tribal agreement or contract. Further, as of FY2010, P.L. 110-351 requires a state to negotiate "in good faith" with any eligible tribal entity in the state if that tribal entity requests to enter into an agreement with the state under which the state would provide Title IV-E funds to the tribe for it to administer all or part of the program on behalf of children under tribal authority. A state will similarly be required to negotiate in good faith with any tribal entity in the state that is not receiving a direct federal allotment of Chafee Foster Care Independence Program and/or Education and Training Voucher funds and which requests an agreement or contract that would allow it to receive funds from the state to administer the program(s) on behalf of Indian children under its authority.

Finally, to help ensure these new provisions result in improved outcomes for Indian children, the bill appropriates $3 million (for FY2009 and every succeeding year) for technical assistance to

[25] S.Rept. 110-467, accompanying S. 3038, p. 5.

[26] The definitions of "Indian tribe" and "tribal organization" included in P.L. 110-351 are the same as those included in Section 4 of the Indian Self Determination and Education Assistance Act and generally extend the authority to apply for these funds to all federally recognized tribes, as well as, the recognized governing body of those tribes. In addition, a "tribal consortium," including two or more tribes or tribal organizations acting together, may apply for direct federal funding under Title IV-E.

tribes and states and for implementation grants to tribes that are preparing to submit a Title IV-E plan for approval to HHS. These implementation grants may be worth as much as $300,000. A tribal entity may receive this grant only once and it must agree to submit a Title IV-E plan to HHS for approval no later than 24 months after receiving the grant funding. If the plan is not submitted within 24 months the tribe must repay the entire grant amount. However, HHS must waive this repayment requirement if the tribe's failure to submit it within 24 months was a result of a "circumstances beyond the control" of the tribe.

Federal Support for Training and Other Changes

Over five years, P.L. 110-351 phases in an increased federal reimbursement rate for states that offer short-term training to workers at private, licensed child welfare agencies—provided this training is related to the Title IV-E foster care, adoption, and kinship guardianship program. The enacted bill also permit states to claim Title IV-E training reimbursement for certain short-term training of current and prospective relative guardians and for court and related personnel (including attorneys) who handle child abuse and neglect cases. The bill sets the federal matching rate for costs of providing short-term training to private agency workers, current and prospective relative guardians, and for certain court or court-related personnel handling abuse and neglect cases at 55% in FY2009, rising 5% annually until it reaches 75% in FY2013. (Title IV-E training costs that were reimbursed at 75% before passage of H.R. 6893 will continue to be reimbursed at that same level throughout this phase-in period.)

P.L. 110-351 makes several changes that are unrelated to child welfare policy. These include clarifying the uniform definition of child that is used for a variety of federal tax code purposes. It also amends the law to permit the Treasury Department to invest excess operating cash for 90 days in repurchase agreements. These non-child welfare-related provisions—together with savings projected from the implementation of kinship guardianship assistance and the school enrollment requirement—are estimated by the Congressional Budget Office (CBO) to fully offset the cost of the bill to the federal treasury over the next five and 10 years.

Finally, the bill prohibits any interpretation of its provisions that would "alter" any current "prohibitions on Federal payments to individuals who are unlawfully present in the United States."

Effective Date

Unless otherwise stipulated, the provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008 became effective on its date of enactment (October 7, 2008). However, a state may have limited additional time to comply with any of the new requirements of the bill, if HHS determines that the state must enact legislation (other than legislation to appropriate funds) in order to meet that requirement(s). As discussed above, the bill stipulates delayed and/or phased in effective dates for its provisions related to removing income eligibility criteria from the federal adoption assistance program (i.e., de-link), extending Title IV-E assistance to eligible youth beyond age 18, providing direct access to tribal entities for federal Title IV-E funding, and providing new or increased federal reimbursement for certain short-term training costs.

Congressional Budget Office Estimates[27]

Although H.R. 6893, as enacted, authorizes significant expansions in federal support for state and tribal child welfare programs, CBO projects a combined change in federal spending and revenues from the overall bill that is roughly budget neutral over ten years (FY2009-FY2018). Specifically, CBO projects that the bill *will reduce* the federal budget deficit by $15 million over those ten years.[28] This positive effect (i.e. reduction in federal budget deficit) is projected to be much larger in the first five years of the bill's enactment ($449 million), in part because a number of the bill's provisions that are expected to increase federal spending are made effective a year or two after enactment and because the full effect of other provisions is phased in over five or more years.[29]

Projected Savings and Increased Revenue

As interpreted by CBO, four major provisions of the bill are projected to produce significant savings (and/or increase revenues) to the federal treasury over five (FY2009-FY2013) and 10 (FY2009-FY2018) years. These are as follows:

- authorization of federal Title IV-E support for kinship guardianship assistance (projected to save $60 million over five years and a total of $791 million over 10 years);[30]
- making school enrollment a condition of federal eligibility for foster care, adoption assistance, and kinship guardianship assistance under Title IV-E (projected to save $213 million over five years and a total of $484 million over 10 years);
- new authority to the Treasury Department related to investment of operating cash (projected to save $50 million over five years and a total of $100 million over 10 years); and
- changes to the tax code's uniform definition of qualifying child ($628 million in savings plus $123 million in increased revenue over five years and a total of $1.402 billion in savings plus a total of $307 million in increased revenue over 10 years).

Projected Increases in Federal Spending

As interpreted by CBO, seven major provisions of the bill are projected to have costs to the federal treasury over the next five (FY2009-FY2013) and 10 (FY2009-FY20018) years. A delayed or phased-in implementation of a number of these provisions helps to reduce their projected cost during these time periods. These provisions are as follows:

[27] Projections in this section are from Congressional Budget Office (CBO), *Preliminary Estimates of Foster Care/Adoption Assistance Draft*, September 15, 2008.

[28] In the event of a federal surplus, the bill projects an *increase in that* surplus of $15 million.

[29] Over the first five years (FY2009-FY2013), CBO projects that the bill will reduce federal spending by $326 million, plus increase revenues by $123 million, for a reduction in the budget deficit of $449 million (or an increase in any budget surplus by that amount).

[30] CBO included any expected effect of the policy permitting states to extend federal eligibility for kinship guardianship assistance to age 21 (for otherwise eligible children leaving foster care for kinship guardianship at age 16 or older) in this estimate.

- annual appropriation of $15 million for Family Connection Grants (projected to increase federal spending by $59 million over five years and by a total of $75 million over 10 years);
- option for states to provide federal Title IV-E assistance up to age 21 for otherwise eligible children remaining in foster care after their 18th birthday and for those who left foster care for adoption after attaining age 16 (effective with FY2011 and projected to increase federal spending by $186 million between that year and FY2013 and by a total of $735 million between that year and FY2018);
- expanded child welfare training claims and/or increase in their federal reimbursement rate (the increased reimbursement rate is phased in over FY2009-FY2013 and is projected to increase federal spending by $138 million over those years and by a total of $412 million over the 10-year period);
- increased oversight of access to health care for children in foster care (projected to increase federal spending by $75 million over 5 years and by a total of $150 million over ten years;
- authority for tribes to apply for and receive direct federal Title IV-E funding (effective with FY2010 and expected to increase federal spending by $30 million between that year and FY2013 and by a total of $237 million through FY2018);
- annual appropriation of $3 million for technical assistance and implementation grants related to improving outcomes for Indian children generally, and implementing tribal access to Title IV-E, specifically (projected to increase federal spending by $12 million over 5 years and by a total of $27 million over 10 years); and
- phase out of income (and related) eligibility criteria for federal adoption assistance (phase-out begins with FY2010 and is expected to increase federal spending by $126 million between that year and FY2013 and by a total of $1.432 billion between that year and FY2018).

Origins of the Enacted Bill and Views

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893) was introduced by Representative Jim McDermott, with Representative Jerry Weller, on September 15, 2008, and passed the House (under suspension of the rules and by voice vote) on September 17, 2008. The bill then went to the Senate where it was passed (by unanimous consent) on September 22, 2008. Enacted on October 7, 2008 as P.L. 110-351, the final legislation represented a compromise between bills that were earlier acted on by the House and by the Senate Finance Committee. These bills are the Improved Adoption Incentives and Relative Guardianship Support Act of 2008 (S. 3038) and the Fostering Connections to Success Act (H.R. 6307). S. 3038 was introduced by Senator Grassley in May 2008, and the Senate Finance Committee approved the "Chairman's Mark" version of that bill on September 10, 2008 (S.Rept. 110-467).[31] H.R. 6307

[31] As introduced in May 2008, S. 3038 included provisions primarily related to reauthorizing the Adoption Incentives program, delinking federal adoption assistance from income and related eligibility criteria, and supporting guardianship assistance under Title IV-E. The bill approved by the Senate Finance Committee on September 10, 2008, was the Chairman's Mark version of S. 3038 (brought by Senator Max Baucus), which was offered as a complete substitute to the original bill. The Chairman's Mark largely maintained the provisions included in the introduced bill while adding provisions related to direct tribal access to Title IV-E funding, continued Title IV-E eligibility for youth after age 18, transition planning for youth leaving foster care, a licensing demonstration project, and others. (See S.Rept. 110-467.)

was introduced by Representative McDermott with Representative Weller in June 2008, and it passed the House on June 24, 2008.[32] Both Representative McDermott and Representative Weller described the final bill, H.R. 6893, as the product of bipartisan and bicameral legislative work and they cited the importance of Senator Max Baucus and Senator Grassley in this effort.[33]

Congressional Activities

During the first session of the 110th Congress, the Income Security and Family Support Subcommittee of the House Ways and Means Committee held a number of hearings to review challenges facing the child welfare system overall, and, in particular, challenges faced by older youth leaving foster care without a permanent family. Following these hearings, in February 2008, Representative McDermott, who chairs that subcommittee, introduced the Invest in KIDS Act (H.R. 5466) to address a number of these challenges.[34]

Some of the provisions incorporated in H.R. 5466, as well as provisions subsequently included in S. 3038, H.R. 6307, and ultimately those that were included in H.R. 6893, were inspired by, or introduced in, other bills during this and earlier Congresses. From the 110th Congress, these bills include the Kinship Caregiver Support Act (S. 661, introduced by Senator Hillary Clinton with Senator Olympia Snowe / H.R. 2188, introduced by Representative Danny Davis); the Adoption Equality Act (S. 1462, introduced by Senator Jay Rockefeller / H.R. 4091, introduced by Representative Jim Cooper); the Tribal Foster Care and Adoption Access Act (S. 1956, introduced by Senator Max Baucus / H.R. 4688, introduced by Representative Earl Pomeroy); the Foster Care Continuing Opportunities Act (S. 1512, introduced by Senator Barbara Boxer); and a bill to increase reimbursement under Title IV-E for short-term training of private agency workers (H.R. 2314, by Representative Weller).[35]

HHS Views

In providing its view on aspects of earlier bills (H.R. 6307 and the Chairman's Mark of S. 3038), that were subsequently included in the final enrolled bill (H.R. 6893), the U.S. Department of Health and Human Services (HHS) strongly supported revising and extending the Adoption Incentive program but disagreed with (1) the specific ways in which states will now be permitted to seek open-ended federal reimbursement for a part of the cost of providing guardianship subsidies to eligible children leaving foster care; (2) the creation of Family Connection grants; and (3) the approach taken in providing access to federal Title IV-E support for tribes.[36] In letters

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[32] H.R. 6307 was based in large part on the provision of Title IV of an earlier bill introduced by Representative McDermott in February 2008, the Invest in KIDS Act (H.R. 5466). The Subcommittee on Income Security and Family Support of the House Ways and Means Committee (Chaired by Representative McDermott) held a hearing in late February 2008 at which it received testimony on the provisions of H.R. 5466. In his prepared opening remarks, Representative Weller noted certain areas of agreement and disagreement with H.R. 5466 and asserted that "we should work together to identify provisions that have bipartisan support so we can get something done this year."

[33] *Congressional Record,* September 17, 2008, p. H8317.

[34] See CRS Report RL34388, *Child Welfare Issues in the 110th Congress,* by Emilie Stoltzfus.

[35] See Statement of Representative McDermott, *Congressional Record,* September 17, 2008, p. H8317 and Senate Finance Committee, News Release, Statement of Senator Max Baucus, Chairman, Finance Committee, "Executive Session to Consider Adoption Incentive, Elder Justice, and Patient Safety Proposals," September 10, 2008.

[36] Letter to Honorable Max Baucus, Chairman, Committee on Finance, U.S. Senate, (including the Department's views on the Chairman's amendment in the nature of a substitute for S. 3038, the Improved Adoption Incentives and Relative Guardianship Support Act of 2008), from Mike Leavitt, Secretary, U.S. Department of Health and Human Services (HHS), September 9, 2008; and Letter to Honorable Charles B. Rangel, Chairman, Committee on Ways and Means,

sent to Congress regarding H.R. 6307 and the Chairman's Mark of S. 3038, HHS, however, did not provide any specific comments related to the expansion of federal eligibility for Title IV-E adoption assistance, the option for states to continue providing federal Title IV-E foster care assistance to eligible youth after their 18th birthday, nor regarding the provisions related to increased federal reimbursement for certain child welfare training costs.

With regard to the state option to provide guardianship assistance under Title IV-E, HHS wrote: "Moving children to permanent homes as expeditiously as possible is an important goal. However, we oppose creating a new entitlement under the title IV-E program for subsidized relative guardians."[37] HHS noted that under the Child Welfare Program Option it has proposed, states would have the "flexibility to support guardianship agreements if they choose."[38] HHS also noted its support for direct federal support to tribes for child welfare programs but, again, it preferred the approach that would be provided to tribes under the Child Welfare Program Option. (The Bush Administration's proposed program option would permit federally recognized tribes to receive child welfare funds from a fixed sum that would be set aside for that purpose.) The Department wrote that it had "serious concerns" that the bills would "weaken [child protection] requirements placed on Tribes in comparison to those placed on States."[39] Finally, in the letter regarding H.R. 6307, HHS pointed out that the activities allowed under the Family Connection Grants could already be funded under existing Title IV-B programs (Child Welfare Services, and Promoting Safe and Stable Families) and also that the Department does not support any new "authorization of activities outside the President's Budget."[40]

Bill Advocates and Support

The act responds to a variety of issues that have been raised for many years (and some for more than a decade) by public child welfare administrators; child welfare, youth, adoption, and tribal advocates; and children and youth who have been (or still are) in foster care; and/or by public child welfare administrators. Enactment of the Fostering Connections to Success and Increasing Adoptions Act of 2008 was urged by many groups, including a coalition of 581 national, state, and local entities (representing organizations in all 50 states) that advocate on behalf of children and youth, as well as by the National Conference of State Legislators (NCSL) and the Conference of Chief Justices and Conference of State Court Administrators.[41]

U.S. House of Representatives, (including the Department's views on H.R. 6307, the Fostering Connections to Success Act) from Mike Leavitt, Secretary, U.S. Department of Health and Human Services (HHS), June 24, 2008. Both letters were provided to the Congressional Research Services (CRS) by the U.S. Department of Health and Human Services (HHS).

[37] Ibid. Identical language in both letters.

[38] Beginning with its FY2003 budget the Bush Administration has annually proposed the Child Welfare Program Option. However, no legislative language has been publicly offered to implement the proposal. According to Budget documents, under this option states could elect to receive Title IV-E foster care funds as a lump sum (capped) and, further, to use those funds for the full range of child welfare purposes and in support of any child. For more information see "Appendix A," in CRS Report RL34388, *Child Welfare Issues in the 110th Congress*, by Emilie Stoltzfus.

[39] Language quoted is identical in both letters (see cite above). However, the letter regarding H.R. 6307 provides examples of specific provisions HHS believes would weaken provisions for Indian children (alternative background checks for tribes, and broad permission for HHS to waive Title IV-E requirements if requested by the tribe). Those specific provisions were not included in the Chairman's Mark of S. 3038 and, subsequently, were not included in H.R. 6893, as enacted.

[40] Family Connection Grants were not authorized in the Chairman's Mark of S. 3038 and are not discussed in this letter.

[41] See letters of support inserted in the *Congressional Record*, September 17, 2008, H8316-H8317.

Section-by-Section Description of the Bill

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) is divided into six titles, most with multiple sections, and makes the following changes.

Title I: Connecting and Supporting Relative Caregivers

Section 101: Kinship Guardianship Assistance Payment For Children

- *Permits states to claim federal reimbursement* (under Title IV-E) *for a part of the cost of providing kinship guardianship assistance* to every eligible child who leaves foster care for placement with a grandparent or other relative who has chosen to become the child's legal guardian.
- Requires that *to be eligible* for federal kinship guardianship assistance *a child must have been eligible to receive federal foster care maintenance payments while living for no less then six consecutive months in the home of his or her prospective relative guardian* (this effectively requires that the prospective relative guardian has met the state foster family home licensing standards and prospective foster parent background checks).
- Stipulates the following additional conditions of federal eligibility for kinship guardianship assistance: The state must determine that (1) the child has been removed from his or her home through a voluntary placement agreement or because a judge found that home contrary to the child's welfare; (2) neither being reunited with his or her parents nor adoption are appropriate permanency options for the child; (3) the child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and (4) any child age 14 or older was consulted before being placed in the kinship guardianship arrangement.
- Provides also that the state must have specific background check procedures for relative guardians, including fingerprint-based checks of national crime databases and child abuse and neglect registry checks, which must be conducted before a relative guardian may receive kinship guardianship assistance payments on behalf of an eligible child.
- Permits states to place a sibling(s) of an eligible child in the same kinship guardianship arrangement and to make kinship guardianship assistance payments on behalf of the sibling(s).
- Establishes that a *kinship guardianship assistance payment* made on behalf of an eligible child *must not be more than the amount the child would receive as a foster care maintenance payment* if he or she remained in a foster family home.
- *Ensures continued categorical Medicaid eligibility* for children receiving federal kinship guardianship assistance.
- Provides that *to receive federal reimbursement for kinship guardianship assistance payments, the state must enter into a written and binding kinship*

guardianship agreement with the prospective relative guardian, which must stipulate that it will remain in effect without regard to the state in which the relative guardian lives and must include (1) the amount of, and manner in which, the kinship guardianship assistance payments will be made on the child's behalf, including the manner in which the amount may, in consultation with the relative guardian, be adjusted periodically based on the circumstances of the relative and the needs of the child; and (2) the additional services and assistance the child and relative will be eligible for under the agreement, including the procedure the relative guardian may use to apply for additional services as needed.

- Entitles each state to claim federal reimbursement for the cost of providing kinship guardianship assistance payments on behalf of an eligible child at the same federal reimbursement rate that is provided for adoption assistance (i.e., ranges from 50%-83%, based on each state's Federal Medical Assistance Percentage, FMAP); and entitles state to claim federal reimbursement of 50% for (non-training) administrative costs related to providing kinship guardianship assistance to eligible children.
- Further stipulates that the kinship guardianship assistance agreement must provide that the state will pay the total nonrecurring expenses *associated with obtaining legal guardianship of the child, or $2,000 of those expenses, whichever is less*.
- For any child in foster care whose permanency plan is placement with a relative guardian and receipt of kinship guardianship assistance payments, requires states to describe in the child's written case plan the (1) steps the agency has taken to determine that it is not appropriate for the child to be returned home or adopted; (2) reasons why a permanent placement in a kinship guardianship assistance arrangement is in the child's best interests; (3) reasons for any separation from siblings during the placement; (4) efforts the state has made to discuss adoption with the relative foster parent, and, if adoption is not chosen by the relative foster parent, documentation of reasons why this is so; and (5) efforts made by the state to discuss with the child's parent or parents, the kinship guardianship arrangement or reasons why the efforts were not made; and (6) the ways in which the child meets the eligibility criteria for kinship guardianship assistance.
- At the termination of any state child welfare demonstration project (waiver) that is related to guardianship and was authorized by the U.S. Department of Health and Human Services (HHS) under Section 1130 of the Social Security Act, provides that the state's costs of providing assistance or services to any child being served under such a demonstration project, as of September 30, 2008, continue to be eligible for federal reimbursement under Title IV-E—but only to the extent that the services and assistance are provided to such a child under the same terms and conditions that applied during the demonstration project.
- *Authorizes states to use federal funds* under the Chafee Foster Care Independence Program *to provide independent living services and other supports to youth who—after reaching their 16th birthday—leave foster care for adoption or placement in kinship guardianship* and permit youth leaving foster care for kinship guardianship after reaching their 16th birthday to be eligible for Education and Training Vouchers. (Children who leave foster care for adoption after their 16th birthday continue to be eligible for Education and Training Vouchers.)

Section 102: Family Connection Grants

- *Appropriates mandatory funding of $15 million* (for each of FY2009-FY2013) for Family Connection Grants (to be awarded on a competitive basis to public (state, local, or tribal) child welfare agencies or eligible private, non-profit organizations) for the support of one or more of the following: *kinship navigator programs, intensive family-finding efforts* that utilize search technology to find biological relatives, *family group decision-making meetings*, which, when appropriate, must safely address issues of domestic violence; and *residential family treatment centers that enable parents and children to live together in a safe environment* for no less than six months and that provide a full range of services to meet the family's needs (onsite or by referral), including substance abuse treatment services, children's early intervention services, family counseling, medical and mental health services, nursery and pre-school, and other services designed to support the family.
- *Requires HHS to annually award no less than $5 million* of the Family Connections Grants funds *to support kinship navigator programs*, that, through information referral systems and other means, assist kinship caregivers in learning about, finding, and using programs and services to meet their own needs and those of the children they are raising, and promote effective partnerships among public and private agencies to ensure these kinship caregiver families are served.
- Requires HHS to set aside no less than 3% of the total annual funding for Family Connection grants for evaluation of grantee activities; and permits HHS to set-aside 2% of total funding for the grants for technical assistance to grantees.
- Provides that HHS may make no more than 30 new Family Connection grants each year; may not award these grants for less than one year nor more than three years; and that it must provide 75% of the funding for a grantee's approved program costs in the first and second year of the grant and 50% in the third year.
- Renames Title IV-B, Subpart 1 of the Social Security Act (which is now named "Child Welfare Services") as the "Stephanie Tubbs Jones Child Welfare Services Program."

Section 103: Notification of Relatives

- *Requires states (under Title IV-E), within 30 days of removing a child from the custody of his or her parent(s) to exercise due diligence to identify all adult grandparents and other adult relatives of the child and to provide them with (1) notice of the child's removal from parental custody; (2) an explanation of their options for participating in the care and placement of the child;* (3) a description of the requirements that must be met to be a licensed foster family home and the additional services and support for children placed in licensed homes; and (4) if state has opted to provide kinship guardianship assistance, a description of how the relative can enter into a kinship guardianship assistance agreement; this requirement is subject to exceptions due to family or domestic violence.

Section 104: Licensing Standards for Relatives

- *Codifies* (under Title IV-E) *existing federal guidance permitting states to waive "non-safety" licensing standards* (as determined by the state) *for relative foster*

family caregivers, but only *on a case-by-case basis* and for a specific child in care.

- *Requires HHS to prepare and submit* to the Senate Finance Committee and the House Ways and Means Committee *a report on licensing of relative foster family homes, including* (1) the number and percentage of children living in licensed relative foster family homes and those living in unlicensed relative foster family homes; (2) the frequency with which states grant waivers of "non-safety" standards and the type of non-safety standards waived; (3) an assessment of how the use of such waivers have affected safety, permanence, and well-being outcomes for children in foster care; (4) a review of any reasons why relative foster family homes may remain unlicensed despite this waiver authority; and (5) recommendations for administrative or legislative actions to increase the share of relative foster family homes that are licensed while ensuring the safety of foster children and improving their permanence and well-being.

Section 105: Authority for Comparisons and Disclosures of Information in the Federal Parent Locator Service

- Permits state child welfare agencies more direct access to the Federal Parent Locator Service.

Title II: Improving Outcomes for Children in Foster Care

Section 201: State Option for Children in Foster Care, and Certain Children in An Adoptive or Guardianship Placement, After Attaining Age 18

- *Permits states* (as of October 1, 2010) *to extend federal* (Title IV-E) assistance to *an eligible child after his or her 18th birthday if the child is in foster care under the responsibility of the state* or if the child left foster care for federal adoption or guardianship assistance after reaching his or her 16th birthday, provided the child has not yet reached his or her 21st birthday and is in school, employed (at least 80 hours a month), *in another activity designed to promote, or remove barriers to employment*, or is incapable of participating in any of those activities because of a documented medical condition.
- *Except in the case of the individuals described above, defines the term "child" as an individual under the age of 18 for all federal child welfare programs included in the Social Security Act* (i.e., Child Welfare Services, Promoting Safe and Stable Families, Foster Care and Adoption Assistance, and Chafee Foster Care Independence Program).
- Also permits children in foster care who are age 18 or older to retain eligibility for federal foster care maintenance payments while living independently in a supervised setting (as must be defined in regulations by HHS).
- Further permits states to continue federal kinship guardianship assistance up to age 21 for a child who has a mental or physical handicap that the state determines

warrants this continued assistance (This was previously, and continues to be, the law with regard to provision of federal adoption assistance.)

- Prohibits payment of federal kinship guardianship assistance payments to a relative guardian if the relative guardian is no longer legally responsible for support of the child (who is under age 18) or if the state determines that the child is no longer receiving support from the relative guardian. (This was previously, and continues to be, the law with regard to adoptive parents and children receiving federal adoption assistance.)
- Makes October 1, 2010, the effective date for all the amendments made in this section (Section 201).

Section 202: Transition Plan for Children Aging Out of Foster Care

- *Requires states* (under Title IV-E) *to have procedures to ensure that 90 days before a child in foster care reaches his or her 18th birthday* (or 90 days before the later birthday up to which a state elects to provide Title IV-E foster care assistance), *the child's caseworker and other representatives* (as appropriate) *must work with the child to develop a personal transition plan* that includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services.

Section 203: Short-term Training for Child Welfare Agencies, Relative Guardians, and Court Personnel

- *Allows states to claim federal reimbursement of the costs of providing short-term training*—related to carrying out the Title IV-E foster care, adoption and kinship guardianship assistance program—*to current or prospective relative guardians, staff of state-licensed or state-approved (private) child welfare agencies, and for certain court or court-related personnel handling abuse and neglect cases.*
- *Phases in a 75% federal reimbursement rate* for these relative guardian, private child welfare agency workers, and court or court-related personnel training claims beginning at 55% in FY2009 and rising by 5% annually (until the reimbursement rate reaches 75% for all Title IV-E eligible training costs in FY2013).

Section 204: Educational Stability

- Restates current requirement (under Title IV-E) that the state must assure that a child's foster care placement takes into account the appropriateness of the child's current educational setting and the proximity of that placement to the school in which the child is enrolled at the time.
- *Requires states to assure that they have coordinated with appropriate local educational agencies to ensure that the child remains in the school in which he or she is enrolled* at the time of the placement, *or,* if this is not in the child's best interests, to assure (with the local educational agencies) *that the child will be immediately and appropriately enrolled in a new school* with all of the education records of the child provided to the school.

- *Permits a state to claim federal reimbursement* at the state's Federal Medical Assistance Percentage or FMAP, which ranges from 50%-83% based on state per capita income) *for the cost of transporting a child to the school in which he or she was enrolled at the time of foster care placement.*
- *Requires a state to provide assurances that each school-age child who receives federal* (Title IV-E) *assistance* (whether in foster care, kinship guardianship or adoption) is enrolled in school full-time, or has already completed high school.

Section 205: Health Oversight and Coordination Plan

- *Requires each state* (under Title IV-B)—working through the state child welfare agency and the state agency that administers Medicaid and in consultation with pediatricians, other health care experts, and experts in, and recipients of, child welfare services—*to create a plan to ensure oversight and coordination of health care, for children in foster care; the plan must include a strategy to identify and respond to the health care needs of children in foster care, including their mental health and dental health needs*, and provide an outline of (1) the schedule for initial and follow-up health screens; (2) how health needs identified in these screens will be monitored and treated; (3) how medical information for children in care will be updated and appropriately shared, which may include development of an electronic health record; (4) steps to ensure continuity of health care services, which may include establishment of a medical home for every child in care; (5) oversight of prescription medicines; and (6) how the state actively consults with and involves physicians and other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for them.
- Stipulates that this requirement must not be understood to reduce or limit responsibility of the state Medicaid agency to administer and provide care and services to children served by the state child welfare agency under the Child Welfare Services program (Title IV-B, Subpart 1).

Section 206: Sibling Placement

- *Requires each state (under Title IV-E) to make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement*, unless the state can document that joint placement is contrary to the safety or well-being of any of the siblings.
- *In the case of siblings who are not jointly placed, requires states to provide for "frequent visitation or other ongoing interaction between the siblings,"* unless the state documents that this would be contrary to the safety or well-being of any of the siblings.

Title III: Tribal Foster Care and Adoption Access

Section 301: Equitable Access for Foster Care and Adoption Services for Indian Children in Tribal Areas

- *Permits* (as of October 1, 2009) *an Indian tribe, tribal organization, or tribal consortium with an approved Title IV-E plan to make claims for federal reimbursement of eligible foster care maintenance, adoption assistance, or kinship guardianship assistance payments* and for related child placement and administrative costs (including those for data collection and training) made on behalf of eligible children who are under tribal responsibility.
- For purposes of defining the tribal entities that may apply for direct federal Title IV-E funding, generally defines "Indian tribe" as any federally recognized tribe and a "tribal organization" as the recognized governing body of any such tribe; and describes a tribal consortium as any two or more Indian tribes or tribal organizations that together submit a single Title IV-E plan for approval.[42]
- With limited and specific exceptions, *requires tribes seeking direct federal support under Title IV-E to meet all the requirements of Title IV-E "in the same manner"* as they must be met by a state receiving these funds.
- *Provides for calculation of a tribe-specific federal matching rate for foster care maintenance payments, adoption assistance payments, and kinship guardianship assistance payments* (a "tribal FMAP"); provides that tribes with an approved Title IV-E plan receive this reimbursement rate directly from the federal government; also provides that if the tribe has a cooperative agreement or contract with a state to administer IV-E payments, the federal government must pay the state the tribal matching rate for the payments made under that agreement.
- Stipulates that any currently existing cooperative agreement or contract entered into between a tribe and state for the administration or payment of funds under Title IV-E must remain in effect after the enactment of this bill, subject to the right of either party to revoke or modify the terms of the agreement or contract, and, further, that states and tribes may continue to enter into agreements or contracts under Title IV-E.
- Permits tribal entities seeking to administer independent living services for eligible Indian children and youth to apply to HHS for an allotment of funds under the Chafee Foster Care Independence Program (and/or for an allotment of Education and Training Voucher funds); and provides that successful tribal applicants are to receive an allotment amount(s) out of the state's allotment for the program(s) that is based on the share of all children in foster care in that state who are under the authority of that tribal entity.
- Stipulates specific parameters within which tribes with an approved Title IV-E plan may (for a limited time—unless extended by regulation or law) claim federal reimbursement, under that plan, for in-kind expenditures from third-party

[42] The specific definitions of "Indian tribe" and "tribal organization" are as those terms are defined in Section 4 of the Indian Self-Determination and Education Assistance Act.

sources; requires HHS (no later than September 30, 2011) to issue regulations related to this kind of Title IV-E claiming by tribes.

- *Requires* (as of October 1, 2009) *a state*, under its Title IV-E state plan, *to negotiate in good faith with any tribal entity in the state that seeks an agreement with the state to administer all or part of the Title IV-E program on behalf of the Indian children* who are under the authority of the tribal entity; and similarly requires as of that date a state, under the Chafee Foster Care Independence Program, to negotiate in good faith with any tribal entity in the state that does not receive a direct federal allotment of Chafee funds if that tribal entity seeks an agreement or contract with the state to administer, supervise, or oversee the program on behalf of eligible Indian children under the tribal entity's authority.
- *Require HHS*, in consultation with tribal entities and affected states, *to issue interim final regulations no later than October 7, 2009,* to implement the tribal access provisions; provides further that these regulations must ensure that a transfer of responsibility for the placement and care of a child from a state child welfare agency to a tribal child welfare agency effects neither the child's eligibility for Title IV-E or Medicaid nor the services or payments provided to the child under those parts of the law; (adds that the regulations must ensure this is the case whether the child is transferred to a tribe that is operating its program under an approved Title IV-E plan or under a cooperative agreement with a state).
- Makes October 1, 2009 (first day of FY2010) the effective date for most provisions in this section (Section 301). However, requirements in this section related to HHS regulations and certain "rules of construction" were effective with the date of enactment, October 7, 2008.

Section 302: Technical Assistance and Implementation

- *To improve services and permanency outcomes for Indian children and their families, requires HHS to provide technical assistance to tribes and states* regarding tribal administration of child welfare programs and required state-tribe interactions related to serving Indian children; *and implementation grants to tribes that are preparing a Title IV-E plan for approval*, which must not be valued at more than $300,000 and must be used to develop data collection systems, cost allocation plans, agency and tribal court procedures necessary to meet the case review requirements, or any other costs attributable to meeting any other requirement necessary for approval of a Title IV-E plan.
- Stipulates that an implementation grant must only be made to a tribal entity one-time and that as a condition of receiving the grant the tribal entity must agree to repay the total amount of the grant if it does not submit a Title IV-E plan to HHS for approval within 24 months of receiving the funds; (the repayment requirement must be waived by HHS if "circumstances beyond the control" of the tribe prevent its submission of a plan within 24 months).
- *Appropriates $3 million annually* (beginning with FY2009) for this technical assistance and implementation grants and permits HHS to provide this assistance and service either directly or through a grant or contract with a public or private organization knowledgeable in Indian tribal affairs and child welfare.

Title IV: Improvement of Incentives for Adoption

Section 401: Adoption Incentives Program

- *Extends funding authority for Adoption Incentives for five years* (FY2009-FY2013) at $43 million annually; resets the base number of adoptions a state needs to finalize to earn an incentive award (in each of FY2008-FY2012) to the number it finalized in FY2007; raises the incentive amount available for an increase in the number of older child adoptions (from $4,000 to $8,000) and for special needs (younger than age nine) adoptions (from $2,000 to $4,000); continues prior law incentive payment amount of $4,000 for increase in overall number of children adopted from foster care; and ensures that states have 24 months to spend any Adoption Incentive awards earned.
- *Requires that any appropriated Adoption Incentive funds not needed to make awards for an increase in the number of adoptions finalized, must be paid as incentive awards for any state that increases the rate at which children are adopted from foster care*; to earn this award for adoptions finalized in any of FY2008 through FY2012 a state must achieve a "foster child adoption rate" that exceeds its previous "highest ever foster child adoption rate" (beginning with FY2002); the amount of the award is $1,000 times the increased number of adoptions achieved by the state that are attributed to the increased adoption rate.[43]

Section 402: Promotion of Adoption of Children with Special Needs

- Phases in (based on age, length of stay in care and membership in sibling group) *elimination of all income, resource, and family structure tests associated with eligibility for federal Title IV-E adoption assistance*, including such tests that were established as part of the prior law cash aid program, which was known as Aid to Families with Dependent Children (AFDC).
- *Begins the phase in of these revised adoption assistance eligibility criteria in FY2010 for any child who is age 16 or older* at the time his or her adoption assistance agreement is finalized (in that or a later year) and *gradually lower this age, until FY2018, when the new eligibility rules will apply to a child of any age.*

[43] To calculate the number of adoptions that are attributed to an increase in the adoption rate you must know the state's "foster child adoption rate" in the award year, the number of children in the state's foster care caseload on the last day of the fiscal year just prior to the award year, and the state's "highest ever foster child adoption rate." A state's foster child adoption rate must be determined by dividing the number of foster child adoptions finalized in the state in a given fiscal year by the number of children in that state's foster care caseload on the last day of the previous year. For example, if a state finalizes 150 adoption during FY2008 and on the last day of the previous fiscal year (September 30, 2007) it had 1,500 children in foster care then the state's foster child adoption rate for FY2008 is equal to 10%. That state earns an award for adoptions in FY2008 if this foster child adoption rate (10%) is above its "highest ever foster child adoption rate"—meaning the best foster child adoption rate the state has ever previously achieved beginning with FY2002. For example, if the highest ever foster child adoption rate the state in the example above had achieved before FY2008 was 9%, then for FY2008, the state's adoption incentive award amount based on the rate increase would be calculated as follows: Multiplying that highest ever rate (9%) by the 1,500 children in care on the last day of the fiscal year prior to the award year (September 30, 2007), subtracting this number 135 from the actual foster child adoptions achieved by the state in FY2008 (150) and multiplying the difference (15) by $1,000 for the award amount ($15,000). (The state's "highest ever foster child adoption rate" for FY2009 would be increased to 10%.)

- Provides that *as of FY2010* the revised adoption assistance eligibility criteria *also applies to any child who has been in care for 60, or more, consecutive months* at the time the adoption assistance agreement is finalized, without regard to the child's age at that time.
- Further stipulates that *as of FY2010* the revised adoption assistance eligibility criteria *also apply to any child who is a* sibling *of a child for whom the new eligibility rules are effective* (whether because of that child's age or length of stay in care), provided that the sibling will be placed in the same adoptive home as the child for whom the new eligibility rules apply.

Section 403: Information on Adoption Tax Credit

- Requires states to provide information to individuals who are adopting a child from foster care, and to those who the state learns are considering such an adoption, of their potential eligibility for the federal adoption tax credit.

Title V: Clarification of Uniform Definition of Child and Other Provisions

[Sections 501 and 502 in this Title are not a part of federal child welfare policy but are changes made to other parts of federal law, including the tax code, to offset costs of increased federal child welfare spending authorized in the previous titles of the enacted bill.]

Section 501: Clarification of Uniform Definition of Child

- Clarifies the uniform definition of qualifying child under the Internal Revenue Code (1) for purposes of the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status, to ensure that such an individual is unmarried and is younger than the taxpayer claiming the individual on his/her tax return; (2) for purposes of the child credit, provide that a qualifying child must be the dependent of the taxpayer claiming the credit; and (3) provide that if a taxpayer claiming a qualifying child is not the parent of the individual so claimed, he or she must have an adjusted gross income that is higher than either of the child's parents.

Section 502: Investment of Operating Cash

- In addition to the current investment options, permits the Treasury Department to invest excess operating cash for 90 days in repurchase agreements.

Section 503: No Federal Funding to Unlawfully Present Individuals

- Prohibits any interpretation of the bill that would "alter" any current "prohibitions on Federal payments to individuals who are unlawfully present in the United States."

Title VI: Effective Date

Unless a different date is stipulated in the Fostering Connections to Success and Increasing Adoptions Act of 2008, the effective date of the amendments made by the bill is October 7, 2008 (date of its enactment); for any state, permits a time-limited exception to the effective date of any requirement added by this bill (under Title IV-B or Title IV-E) if HHS determines that the state must enact legislation (other than legislation to appropriate funds) to comply with a new requirement.

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